

**STATE OF MICHIGAN
DEPARTMENT OF LABOR AND ECONOMIC GROWTH
OFFICE OF FINANCIAL AND INSURANCE SERVICES**

Before the Commissioner of Financial and Insurance Services

**Office of Financial and Insurance
Services,**

Petitioner,

v

**Case No. 04-444-L
Docket No. 2004-1230**

Moises M. Ledesma,

Respondent.

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For the Petitioner:

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**Issued and entered
this 29th day of November 2005
by Linda A. Watters
Commissioner**

FINAL DECISION

The Administrative Law Judge in this matter issued a Proposal for Decision dated September 8, 2005. He recommended that the Commissioner revoke Respondent's license to transact insurance business in Michigan.

Respondent attempted to send Exceptions to the Hearings Coordinator, but they were not received. The Special Deputy issued a Final Decision adverse to the Respondent dated October 11, 2005. After receipt of the Final Decision, the Respondent again sent Exceptions, which were received October 17, 2005. Thus, to address the issues raised by the Respondent, the first Final Decision will be set aside.

The factual findings in the PFD are in accordance with the preponderance of the evidence and the conclusions of law are supported by reasoned opinion. The PFD is attached, adopted, and made part of this Final Decision.

In his Exceptions, the Respondent does not dispute the factual findings in the Proposal for Decision, but argues that license revocation is too severe a penalty. He makes the following principal points: he did not personally steal the premium money; the insurer was aware of business practices that contributed to problem; and, of the hundreds of policies he handled, only seven of them resulted in problems. He further drew attention to the Final Decision in the contested case, *In the matter of Patrick Stasiak and Sharon Stasiak, Respondents*, Case No. 91-11892-L, issued April 6, 1994. There, the managing agent and owner of the agency did not lose her license where an employee mismanaged applications and premium moneys.

As will be seen below, this regulatory agency has long held agents accountable for the acts of persons working for them. Furthermore, the Respondent is no less personally accountable for his employees if, as he asserts, the insurer knew he was utilizing inexperienced and unlicensed persons in the application process. Moreover, seven persons--all of which believed they had bought insurance through the Respondent--ended up driving without insurance. Insurance consumers should never be placed in such a vulnerable position.

The Commissioner recognized the importance of agents living up to their fiduciary duties and other responsibilities in *Stasiak*. This is underscored in that decision and the reasons why Sharon Stasiak retained her license are set forth: [at 8-9]:

Determining the license sanction with respect to Sharon Stasiak warrants careful consideration. Any breach of fiduciary duty with respect to applications is grave. Where an agent fails in his or her duty, insurance applicants may be without insurance that is essential to protect their well being and the well being of their families and their businesses. In this case, several consumers had automobile losses that were not covered by insurance due to the wrongful acts of Kim Williams before Sharon Stasiak became responsible for actions of the agency.

Insurance agents are placed in a position of great trust with respect to the public. Where breaches of fiduciary duty are intentional and repeated, the protection of the public requires the revocation of the agent's license. A negligent breach of fiduciary duty may also warrant the suspension or revocation of an agent's license.

Sharon Stasiak's license was summarily suspended for a period of almost four months at the commencement of this contested case. This period of suspension provides an adequate sanction for the breaches of fiduciary duty in this contested case. Several considerations taken together indicate that the revocation of Sharon Stasiak's license is not warranted: she was a new agent; she knew she would need training and used September and October as a training period; she assumed control of an agency that had been chronically mismanaged; she had her daughter discharged from the agency upon knowing of her dishonesty; her two breaches of fiduciary duty occurred in the turbulent transition period of the agency; and she was not shown to be dishonest.

After a lengthy consideration of the facts and law in this matter, the ALJ recommended that the Commissioner revoke the Respondent's license. He succinctly summarized his reasons as follows:

Respondent's violations involve many customers (seven) over a significant period of time (almost seven months). Respondent was not a new, inexperienced agent, but had been licensed for several years. Respondent's actions, if not intentional, were at least reckless. He allowed his inadequately

trained employees to process the applications and cash with virtually no oversight. Because of this, seven customers, who spoke little if any English, suffered a significant delay in the issuance of their policies, and were confronted with the false claim that they had not paid their premiums. Respondent accepts no responsibility and has shown no remorse for his misconduct.

By contrast, Sharon Stasiak was a new managing agent, the mishandling of applications occurred within the first few days of her management, there was no theft of premiums, and she took the responsible action of having her daughter fired promptly after learning she was dishonest.

The Respondent's actions and inactions in this matter were substantially more serious than those of Sharon Stasiak. The protection of the insurance buying public warrants the revocation of his license.

II ORDER

Therefore, it is ORDERED that:

1. The Final Decision entered in this matter October 11, 2005, is vacated.
2. Respondent's license to transact insurance business in Michigan is revoked.